

**CONRAIL®**



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**VIA FACSIMILE & OVERNIGHT DELIVERY**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, DC 20423-0001

**Re: STB Finance Docket No. 34813, New York New Jersey Rail  
LLC and New York Cross Harbor Railroad Terminal Corp. -  
Transaction Within a Corporate Family Exemption**

Dear Secretary Williams:

This letter is submitted on behalf of Consolidated Rail Corporation ("Conrail") in the above-referenced proceeding.

We are in receipt of a copy of the letter response of New York New Jersey Rail LLC ("NYNJ") to Conrail's December 28th submission to the Board wherein Conrail requested a stay of the subject proceeding. In its response, NYNJ states that it intends to satisfy its contractual obligations to Conrail under its lease agreement before "consummating this transaction." As explained below, NYNJ's rationale for requesting the Board to deny Conrail's request for a stay is a case of putting the cart before the horse. Accordingly, a stay is appropriate and necessary in order to ensure that Conrail's rights are not compromised by the granting of the relief sought by the subject Petition.

Among the intangible assets that the New York Cross Harbor Railroad Terminal Corporation ("NYCH") proposes to transfer to NYNJ is a long term lease with Conrail that governs its operations at Greenville, New Jersey. The Lease by its express terms cannot be transferred without the prior consent of Conrail, which consent has not been requested nor given. Accordingly, it is inappropriate for NYNJ to request the Board to expend time and resources to review and process a filing regarding a transaction that may or may not go forward for reasons that are outside of the Board's jurisdiction and control. Moreover, should Conrail decide not to give its consent, we will likely seek the

The Honorable Vernon A. Williams  
January 3, 2006  
Page 2

revocation of the Exemption, which will require additional effort on the Board's part as well as the parties, all of which would be avoided if a stay were granted.

Of perhaps more significance, however, NYNJ also fails to recognize that, under a settlement agreement with NYCH, Conrail has a right of first refusal and right of first purchase with respect to any transfer of NYCH assets. This was an obligation of NYCH with which it has not complied. Substantial question remains as to whether NYNJ has any rights to the assets (including the Greenville Yard lease) of NYCH. Accordingly, without Conrail's waiver of such rights, NYNJ similarly cannot accomplish the objective of its Petition. The assertion that NYNJ will comply with its contractual obligations regarding the lease first ignores the obligations under the settlement agreement and second ignores the fact that other parties not mentioned by NYNJ's letter, such as NYCH, may have obligations not covered by NYNJ's letter.

In sum, a stay of thirty days will afford Conrail the opportunity to evaluate the proposed transaction and determine whether to consent to the assignment of the Lease and further whether to exercise its rights with respect to the transfer of any and all of NYCH's assets, which, contrary to the statement in Mr. Heffner's reply letter, include the trackage located at Greenville Yard. Accordingly, we urge the Board to grant Conrail's request for a stay.

Respectfully submitted,



John K. Enright

cc: John D. Heffner, Esq. (via facsimile and overnight delivery)  
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